

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

FEB -7 2008

COURT OF APPEALS  
DIVISION TWO

|                        |   |                            |
|------------------------|---|----------------------------|
| THE STATE OF ARIZONA,  | ) |                            |
|                        | ) |                            |
| Respondent,            | ) | 2 CA-CR 2007-0261-PR       |
|                        | ) | DEPARTMENT B               |
| v.                     | ) |                            |
|                        | ) | <u>MEMORANDUM DECISION</u> |
|                        | ) | Not for Publication        |
| DANIEL RICHARD STATON, | ) | Rule 111, Rules of         |
|                        | ) | the Supreme Court          |
| Petitioner.            | ) |                            |
| _____                  | ) |                            |

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20051790

Honorable Ted B. Borek, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney  
By Jacob R. Lines

Tucson  
Attorneys for Respondent

Creighton Cornell, P.C.  
By Creighton Cornell

Tucson  
Attorneys for Petitioner

E C K E R S T R O M, Presiding Judge.

¶1 Petitioner Richard Staton pled guilty to one count of theft by misrepresentation. The trial court sentenced him to a partially mitigated prison term of one

year and ordered him to pay \$149,479.95 in restitution to the victim. Staton challenged the restitution order in a petition for post-conviction relief filed pursuant to Rule 32, Ariz. R.Crim. P. After the trial court summarily denied relief and denied his motion for rehearing, Staton filed this petition for review. We grant review to determine whether the trial court abused its discretion in denying relief. *See State v. Cramer*, 192 Ariz. 150, ¶ 8, 962 P.2d 224, 226 (App. 1998) (“[T]he grant or denial of post-conviction relief . . . is within the discretion of the trial court, and we will not reverse the trial court’s decision absent an abuse of that discretion.”). We deny relief.

¶2 Prior to Staton’s change of plea, the state had instituted a separate, civil forfeiture proceeding against property the state had seized from Staton’s codefendants and others allegedly involved in a larger “crime ring.” Staton moved the trial court for an order requiring the state to liquidate the property and give the proceeds to his theft victim. Staton believed the property had been purchased using money from the automatic teller machine (ATM) theft. The state opposed the motion, explaining that the property had not been seized from Staton but was part of a larger investigation involving multiple crimes against multiple victims and that the trial court lacked authority to order what Staton had requested. The trial court set the matter for oral argument at a pretrial conference, but at that conference, Staton changed his plea.

¶3 The plea agreement provided that Staton would forego a restitution hearing and accept the amount contained in the victim’s restitution claim form “as conclusive proof

of the victims' economic loss." The agreement also included the standard term that nothing in it should "be construed to . . . prohibit the State from proceeding with and/or initiating an action for civil forfeiture arising out of or connected with the facts associated with this case." The trial court accepted the plea and denied Staton's motion regarding the seized property after Staton moved to vacate oral argument on the motion.

¶4 Before sentencing, Staton filed a motion for reconsideration, arguing the trial court had been required to order the state to liquidate the seized property and distribute the proceeds to the victim. The trial court denied the motion for reconsideration and sentenced Staton. Staton filed a petition for post-conviction relief under subsections (a) and (c) of Rule 32.1, which provide for relief when a sentence violates the United States or Arizona Constitutions, exceeds the maximum sentence authorized by law, "or is otherwise not in accordance with the" legally authorized sentence. To the extent we understand the petition, Staton contended the trial court had been obligated to grant his motion regarding the seized property in order to reduce the victim's economic loss, thus reducing his restitution obligation. In the event the trial court did not "find a direct link between the . . . ATM money and seized property and order liquidation," he asked the court to order the prosecution to disclose evidence that he believed would prove such a "link." As noted above, the trial court summarily denied the petition.

¶5 In his petition for review, Staton claims "the trial court's denial of relief was violative of every applicable procedural rule, statute, and state/federal constitutional

provision regarding restitution.” However, he does not articulate how he was entitled to relief under any of the rules, statutes, or constitutional provisions he cites. The Arizona Constitution establishes a victim’s right to “receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim’s loss or injury.” Ariz. Const. art. II, § 2.1(A)(8). Thus, a trial court “shall require” a convicted person to make restitution to his or her victim “in the full amount of the [victim’s] economic loss.” A.R.S. § 13-603(C). In this case, Staton agreed to have the amount of restitution established by the victim’s claim form, and the trial court ordered restitution accordingly. Staton’s sentence, therefore, is neither unconstitutional or otherwise illegal, nor is it excessive. To the extent Staton is attempting through post-conviction proceedings to assert the victim’s right to the property, notice of the forfeiture proceedings, or any other right provided to victims through constitutional or legislative provisions, such a claim is not cognizable under Rule 32, and Staton had no standing to assert it below. *See* A.R.S. § 13-4437. The trial court did not abuse its discretion by summarily denying relief. Accordingly, although we grant review, we deny relief.

---

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

---

PHILIP G. ESPINOSA, Judge

---

GARYE L. VÁSQUEZ, Judge